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In the Supreme Court of the United States

OCTOBER TERM, 1984

PITTSBURGH BUILDING CONSTRUCTION INDUSTRY ADMINISTRATIVE COMMITTEE, ETC., PETITIONER

v.

UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner contends that the statute of limitations in 28 U.S.C. 2415 applies to administrative proceedings.[1] The court of appeals correctly held that Section 2415 is inapplicable to administrative proceedings. Section 2415 applies only to actions brought in court. The court of appeals' decision does not conflict with any decision of any other federal court of appeals or with any decision of this Court, and does not raise any issue warranting review by this Court.

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[1]Section 2415 provides that "every action for money damages brought by the United States * * * shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later."

1. Petitioner, Pittsburgh Building Construction Industry Administrative Committee for Research, Education and Training, Inc. (Pittsburgh Committee), is a nonprofit corporation, created to increase minority participation in the construction industry (Pet. App. 1a). The Pittsburgh Committee was a party to a cost-reimbursement contract with the United States Department of Labor (DOL) for the period from November 1, 1970, through January 21, 1972 (Pet. App. 5a). The contract provided that the Pittsburgh Committee would recruit and train minorities for the construction trades, at a total estimated cost to the DOL of $471,255 (Pet. App. 1a).

The DOL Office of Program Review and Audit audited the Pittsburgh Committee contract in 1973 (Pet. 3). Costs of $150,073 were questioned in an audit report dated May 17, 1973 (Pet. App. 2a). By findings and determinations issued eight years later, on July 10, 1981, a DOL Contracting Officer disallowed $146,189 of the $150,073 in questioned costs (Pet. App. 6a). After receiving a response from the Pittsburgh Committee, the Contracting Officer affirmed the cost disallowance in a final decision rendered on August 21, 1981 (*ibid.*). The Pittsburgh Committee appealed the decision to the DOL Board of Contract Appeals (Board) (Pet. App. 7a).

The Pittsburgh Committee argued, among other things, that the DOL was barred by Section 2415 from claiming the disallowed cost (Pet. App. 4a, 15a). The Board rejected this argument as being "without merit" (Pet. App. 15a). The court of appeals affirmed, holding that "section 2415 does not apply to actions brought before administrative boards" (Pet. App. 4a).

2. The only question petitioner presents for review by this Court is whether 28 U.S.C. 2415 bars an administrative decision to disallow contract costs if the decision is not rendered within the period specified in the section. As the Board and the court of appeals held, Setion 2415 applies only to actions brought in court.

By its terms, Section 2415 applies only where an agency of the United States brings an "action" for money damages upon a contract by filing a "complaint" (Pet. App. 19a). As the legislative history states, Section 2415 "defines the time limitations for the United States to bring *actions in the U.S. Courts.*" S. Rep. 1328, 89th Cong., 2d Sess. 8 (1966) (emphasis added). In addition, Section 2415 provides that, notwithstanding its general six-year limit, actions may be brought within one year after a final administrative ruling, even if that occurs more than six years after accrual of the action. Clearly, the term "action" refers to court actions, not to the administrative proceedings that trigger the additional one-year limit.[2] Finally, Section 2415 is included among "the general provisions applying to the United States as a party in litigation" (S. Rep. 1328, 89th Cong., 2d Sess. 8 (1966), not among statutory provisions governing administrative proceedings. The DOL did not bring an action in court against petitioner (Pet. App. 1a, 5a). Therefore, Section 2415 is irrelevant to the disposition of this case.

3. The cases petitioner cites do not conflict with or cast doubt on the court of appeals' interpretation of Section 2415. In two of those cases, *United States* v. *D.H. Dave, Inc.*, 424 F. Supp. 424 (D. Md. 1976), and *United States* v. *Skidmore, Owings & Merrill*, 505 F. Supp. 1101 (S.D.N.Y. 1981), the government brought suit in court, and the issue

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[2]Compare *Crown Coat Front Co.* v. *United States*, 386 U.S. 503, 511 (1967) ("the 'right of action' of which [28 U.S.C.] 2401(a) speaks is not the right to administrative action, but the right to file a civil action in the courts"); *Unexcelled Chemical Corp.* v. *United States*, 345 U.S. 59, 66 (1953) (for purposes of Section 6 of the Portal-to-Portal Act of 1947, 29 U.S.C. 255, an "action" is commenced when a complaint in a lawsuit is filed, not when administrative proceedings are initiated).

was whether it had filed in time under Section 2415. In neither case did a court consider whether Section 2415 applied to administrative proceedings.

The only other case relied upon by petitioner that involved Section 2415, *Lane* v. *United States*, 633 F.2d 1384 (Ct. Cl. 1980), reh'g denied 639 F.2d 758 (Ct. Cl. 1981), does not support petitioner's position. In *Lane*, the court held that the government was barred from bringing a counterclaim, not by Section 2415, but by laches. On rehearing, the court stressed that the case was "unique" and that usually "laches do not run against the sovereign" (639 F.2d at 761). The court specifically noted that its holding did not apply to contract disputes (*id.* at 760). Thus, nothing in *Lane* — a decision by the predecessor of the court below, rather than of another circuit — supports petitioner's argument that DOL was barred from disallowing part of its claim.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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[3] *S&E Contractors, Inc.* v. *United States*, 406 U.S. 1 (1972), did not involve Section 2415. The Court in *S&E Contractors* held that the Department of Justice could not challenge an Atomic Energy Commission decision to award a contractor additional compensation under a contract which provided that a decision of the Commission was "final and conclusive" (406 U.S. at 2-3).